APPEAL NO. 010132

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 15, 2000. The issues at the CCH were whether horseplay by the appellant (claimant) was a producing cause of his injury such that the respondent (carrier) was relieved of liability for the injury, and whether the claimant had disability from a compensable injury.

The hearing officer held that the carrier was discharged from liability because the claimant's injury resulted from horseplay and that, although the claimant was unable to obtain and retain employment due to his injury, the carrier was not liable for compensation because there was no compensable injury.

The claimant appeals and argues that he was not a voluntary participant in horseplay because he "reacted involuntarily" when sprayed with a water hose. The carrier responds that the hearing officer's decision is based on the facts and law.

DECISION

We affirm the hearing officer's decision.

A carrier is not liable for compensation if an employee's horseplay was a producing cause of the injury. Section 406.032(2). Whether or not such horseplay was "voluntary" or "involuntary" is not a determinative part of this exception as it is for the exception for engaging in social or recreational activities (Section 406.032(1)(D)). *See* Texas Workers' Compensation Commission Appeal No. 91029, decided October 25, 1991. Whether the conduct in which a claimant was engaged at the time of the injury was horseplay is a question of fact for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 93013, decided February 16, 1993.

In this case, the hearing officer did not err in finding that the claimant's horseplay was a producing cause of the injury to his knees on _____, when he slipped and fell in water while trying to get a water sprayer out of the hands of his coworker. A number of witnesses testified, and the hearing officer is charged as the sole judge of weighing the credibility, materiality, and relevance of such evidence. Section 410.165(a). We have reviewed the record and cannot agree that his determination that the claimant was

engaged in horseplay is against the great weight and preponderance of the evidence. Because he found no "compensable injury," there is no "disability" as defined in Section 401.011(16). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge